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Via ECF

Hon. Analisa Torres
United States District Court, Southern District of New York
500 Pearl St.
New York, New York 10007

**Re: *Mario Badescu Skin Care, Inc. v. Sentinel Ins. Co.*, 20 Civ. 6699 —
Joint Request to Stay Deposition and Expert Discovery Pending Rule 12 Motion**

Dear Judge Torres:

We write on behalf of both parties to respectfully request that the Court permit the parties to stay deposition and expert discovery pending a ruling on the forthcoming motion from the defendant (“Sentinel”) to dismiss the Amended Complaint.

By way of background, this is a COVID-19 insurance coverage case. The plaintiff (“Mario Badescu”) is a salon and spa that alleges that its insurance contract with Sentinel provides coverage for income it lost when its operations were suspended starting in March 2020.

The parties have completed document discovery, and have filed a proposed Stipulation and Order for Mario Badescu to file an Amended Complaint. (ECF 24.) Once the Amended Complaint is filed, Sentinel intends to move to dismiss it under Rule 12.

The parties have completed document discovery, but, subject to the Court’s approval, would prefer to not incur the added and substantial expense of deposition and expert discovery before the Court rules on the threshold question of whether Mario Badescu’s Amended Complaint states a claim for relief.

We have reason to believe the court’s guidance on the motion will be instructive, because so many courts, on similar motions, have reached conclusions about the proper interpretation of similar insurance contract language. Specifically, seven federal courts in New York, and two New York state courts, have issued rulings on the pleadings in cases raising substantially the same question as is raised here—whether insurance coverage for “direct physical loss” or “direct

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physical damage” to property is triggered by business losses associated with the COVID-19 pandemic. *See Jeffrey M. Dressel, D.D.S., P.C. v. Hartford Ins. Co. of the Midwest, Inc.*, No. 20-cv-2777, 2021 WL 1091711 (E.D.N.Y. Mar. 22, 2021); *Sharde Harvey, DDS, PLLC v. Sentinel Ins. Co., Ltd.*, No. 20-CV-3350, 2021 WL 1034259 (S.D.N.Y. Mar. 18, 2021); *Food for Thought Caterers Corp. v. Sentinel Ins. Co.*, 20 Civ. 3418, 2021 WL 860345 (S.D.N.Y. Mar. 6, 2020); *deMoura v. Cont’l Cas. Co.*, 20 Civ. 2912, 2021 WL 848840 (E.D.N.Y. Mar. 5, 2021); *Visconti Bus Serv, LLC v. Utica Natl. Ins. Group*, No. EF005750-2020, 2021 WL 609851 (N.Y. Sup. Ct. Feb. 12, 2021); *Soundview Cinemas Inc. v. Great Am. Ins. Co.*, Index No. 605985-20, 2021 WL 561854 (N.Y. Sup. Ct. Feb. 10, 2021); *Tappo of Buffalo, LLC v. Eerie Ins. Co.*, 20-CV-754, 2020 WL 7867553 (W.D.N.Y. Dec. 29, 2020); *10012 Holdings, Inc. v. Hartford Fire Ins. Co.*, 20 Civ. 4471, 2020 WL 7360252 (S.D.N.Y. Dec. 15, 2020); *Michael Cetta, Inc. v. Admiral Indem. Co.*, 20 Civ. 4612, 2020 WL 7321405 (S.D.N.Y. Dec. 11, 2020). While Plaintiff contends that it certainly is aware of these decisions, it claims that there are both factual and legal issues that are distinct to this case. Thus, the Court’s early guidance on these issues would materially advance resolution and if the motion is denied, shape the scope of discovery going forward. Furthermore, should the Court deny Sentinel’s anticipated motion, the parties would be prepared to immediately resume the case schedule, with depositions and expert discovery.

While the parties are aware that the Court generally does not stay discovery simply because motions are pending, they respectfully submit that the unique circumstances here—where the parties are jointly requesting it and where document discovery has already been completed—justify a brief stay of deposition and expert discovery.

Respectfully,

/s/ Charles Michael

Charles Michael

DENIED.

SO ORDERED.

Dated: April 8, 2021
New York, New York



ANALISA TORRES
United States District Judge